241

SUPREME COURT OF THE UNITED STATES.

No. 181.

DAVIS B. LAWLER, TIMOTHY WALKER, STEPHEN S. L'HOMMEDIEU, GEORGE GRAHAM, JOHN S. HARRISON, & JACOB BURNET, PLAINTIFFS IN ERROR,

vs.

JAMES H. & JOHN WALKER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF OHIO.

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[GIDEON, Print.]

The United States of America, to the honorable the judges of the [L. S.] supreme court of the State of Ohio, within and for the county of Hamilton, greeting:

Whereas, in the record and process, and also in the rendering judgment in a certain action on the case, which was in the said court, between James H. Walker and John Walker, plaintiffs, and Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, and Jacob Burnet, defendants, manifest error hath intervened, as it is said, to the great damage of the said Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, and Jacob Burnet, as by their complaint we are informed; and we being willing that the error aforesaid (if any) be corrected, and full and speedy justice be done in this behalf to the said parties, command you that the record, process, and judgment aforesaid, with all things touching the same, under your seals, distinctly and plainly, without delay, you send and certify to the judges of the Supreme Court of the United States on the first day of the next term of said court, so that the judgment aforesaid being inspected, the court may further, for correcting the error aforesaid, do that which of right and according to law ought to be done.

Witness the honorable Roger B. Taney, chief justice of the United [SEAL] States of America, this fourth day of April, in the year of our Lord one thousand eight hundred and fifty, and in the seventy-fourth year of the American independence.

Attest: WM. MINER, *Clerk*.

Received a copy of this writ 13th April, 1850.

ISAAC G. BURNET, *Clerk*.
Per S. G. BURNET, *Dep'y*.

The record, process, and judgment in the within named case, with all things touching the same, are herewith certified to the judges of the Supreme Court of the United States, under the seal of our supreme court of the State of Ohio, as within commanded.

ISAAC G. BURNET, *Clerk*.
Per S. G. BURNET, *Dep'y*.

CINCINNATI, *April 15th*, 1850.

Pleas at the court-house, in the city of Cincinnati, in the county of Hamilton, and State of Ohio, before the honorable Edward Avery and Rufus P. Spalding, judges of the supreme court of the State of Ohio aforesaid, sitting within and for the county of Hamilton aforesaid, at the term of May, commencing on the ninth day of May, anno domini one thousand eight hundred and forty-nine.

DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet,
vs.
JAMES H. WALKER & John Walker, parties, &c., firm of J. H. & J. Walker.
} In error to the court of common pleas of Hamilton county.

Be it remembered, that heretofore, to wit, on the twenty-ninth day of July, anno domini one thousand eight hundred and forty-eight, Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet, by Charles Fox, Samuel M. Hart, and Wm. V. Groesbeck, esqrs., their attorneys, filed in the office of the clerk of the supreme court of the State of Ohio, within and for the county of Hamilton, their præcipe for a writ of error in a certain cause lately pending in the court of common pleas, in and for said county of Hamilton, wherein James H. Walker and John Walker, partners, &c., firm of J. H. & J. Walker, were plaintiffs, and the said Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, Jno. Scott Harrisson, and Jacob Burnet were defendants, closed in the words and figures following, to wit:

Præcipe.

JAMES H. WALKER & John Walker, parties, &c., firm of J. H. & J. Walker,
vs.
DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet.
} 287. Court of common pleas.

Judgment at May term, anno domini 1848, No. 287, law issues, action on the case, for plaintiffs.

Damages - - - - - - -	$3,452 10
Cost - - - - - - -	27 54
Amount - - - - - - -	$3,479 64

Issue writs of citation and error in the above cause, returnable to the next term of the supreme court of the State of Ohio, within and for the county of Hamilton. July 29th, 1848. To Isaac G. Burnet, clerk of the Hamilton supreme court.

C. FOX,
S. M. HART,
WM. H. GROESBECK,
Per T. WALKER,
Attorneys for defendants.

And afterwards, to wit, on the fifth day of March, anno domini 1849, there was issued out *out* of our supreme court of the State of Ohio,

within and for the county of Hamilton, our certain writ of citation, directed to the sheriff of our said county, closed in the words and figures following, to wit:

Citation.

State of Ohio, Hamilton county, ss., to the sheriff of said county, greeting:

We command you to give notice to James H. Walker and John Walker, partners, &c., firm of J. H. & J. Walker, that Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet, have filed their præcipe for a writ of error upon a judgment in a certain action of the case, lately pending before the judges of the court of common pleas, in and for the said county of Hamilton, and wherein the said James H. Walker and John Walker, partners, &c., firm of J. H. & J. Walker, were plaintiffs, and the said Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet were defendants; and also to cite the said James H. Walker and John Walker, partners, &c., firm of J. H. & J. Walker, to appear before the judges of the supreme court, at the court-house in said county, on the first day of the next term of said supreme court, to show cause, if any there be, why the said judgment should not be reversed, and why speedy justice should not be done to the parties in that behalf; and of this writ make legal service and due return.

Witness Isaac G. Burnet, clerk of our supreme court, at Cincinnati, this fifth day of March, A. D. 1849.

[SEAL.]

ISAAC G. BURNET, *Clerk*,
Pr. S. G. BURNET, *Deputy*.

Endorsement.

Which writ was endorsed, "notice and citation to May term, 1849."

Return.

And duly returned by said sheriff with the following endorsements, to wit, "1849, March 12th, service acknowledged by Chase, Ball and Hoadley, attorneys for J. H. & J. Walker."

JAMES COOPER, *Sheriff*,
By CHAS. BROADWELL, *Deputy*.

Acknowledgment of service.

We acknowledge service of this writ on behalf of defendants in error; Cincinnati, March 12, 1849.

CHASE, BALL & HOADLEY,
Attorneys for J. H. & J. Walker.

And also afterwards, to wit, on the said fifth day of March, anno domini 1849, there was issued out of our supreme court of the State of Ohio, within and for the county of Hamilton, our certain writ of error, directed to the judges of the court of common pleas, in and for said county, closed in the words and figures following, to wit:

Writ of error.

STATE OF OHIO, *Hamilton county, ss.*

To the judges of the court of common pleas, within and for said county, greeting:

Because in the record and proceedings, and also in the rendition of judgment in a certain action on the case which was lately in our said court, before you, wherein James H. Walker and John Walker, partners, &c., firm of J. H. & J. Walker, were plaintiffs, and Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnett were defendants, error has intervened, as it is said, to the damage of the said Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnett; and we being willing that such error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid in that behalf, do command you, that if judgment be thereupon given, then, without delay, you send to us, distinctly and openly, under the seal of your court, an authenticated transcript of the journal, entries, and proceedings aforesaid, with the original papers and all things concerning the same, and this writ; so that the same being inspected, we may, at the next term of our supreme court, to be holden within and for the said county of Hamilton, cause further to be done thereupon what of right and according to the laws of the land ought to be done.

Witness Isaac C. Burnet, clerk of our said supreme court, at Cincinnati, this fifth day of March, anno domini 1849.

[SEAL.]

ISAAC G. BURNET, *Clerk.*
Pr. S. G. BURNET, *Deputy.*

Endorsement.

Which writ was endorsed, "writ of error to May term, 1849."

Return.

And duly returned by our said court of common pleas, endorsed, "an authenticated transcript of the docket, and journal entries, and proceedings, and judgment had in the within case, together with the original papers, are herewith returned to the supreme court as within commanded. Cincinnati, April 2d, 1849.

E. C. ROLL, *Clerk, H. C.*

And afterwards, to wit, on the thirtieth day of April, anno domini 1849, in obedience to the command of the foregoing writ, the clerk of the court of common pleas filed with the clerk of our supreme court, of the State of Ohio, within and for the county of Hamilton, the original papers and pleadings in the foregoing return mentioned, and an authenticated transcript of the journal entries and proceedings, and final judgment made and entered in said cause by the said court of common pleas, closed in the words and figures following, to wit:

Transcript.

Pleas at Cincinnati, in the county of Hamilton, and the State of Ohio, before the honorable William B. Caldwell, president judge of the ninth judicial circuit of the court of common pleas of Ohio; Robert Moore, John A. Wiseman, and James Saffin, esquires, his associates, judges of the same court, within and for the county aforesaid, at the term of May, anno domini 1848.

James H. Walker and John Walker, partners in trade, firm of J. H. & J. Walker,
vs.
Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet. } Case 287.

1846, July 3d, summons issued to May term; endorsed, "summons in case suit brought to recover the amount of bills held by plaintiffs, issued by the Cincinnati and Whitewater Canal Company, an unauthorized bank, under the direction of the defendants; amount due $4,000 00, damage $6,000 00, to May term, 1846.

Summons returned, endorsed, "1846, July 4th, served by copy personally on *David* B. Lawler, and by copy at residence of Timothy Walker, George Graham, John Scott Harrisson, Jacob Burnet, and service acknowledged for Stephen S. L'Hommedieu, by their attorneys, Wrights and Miner.

J. H. GERARD, *Sheriff.*"

Continued 1846; August 3d, declaration filed, rule for plea; August 29, plea filed; 1846, November term, continued; 1847, February term, continued; 1848, May term, June 18th, plea filed; 18th June, demurrer to plea filed, continued; 1847, November term continued; 1848, May term, June 2d.—Jury sworn, viz., Robert Glass, James Hughes, E. Thusing, M. B. Mitchell, John W. Riley, John S. Muzzy, John Bowes, W. L. Williams, Henry Hathaway, jr., James Hutchens, Thomas Benedict, and E. C. Walden.

Witnesses sworn and examined, viz., Peter Outcalt, Samuel E. Foote, Wm. Woodruff, and S. Walker.

The jury retired, under the charge of the sheriff, with instructions to seal their verdict and bring it in to-morrow morning.

June 3d.—The jury, who retired last evening, with instructions to seal their verdict and bring it in to-day, now come into court with their verdict, and say:

We, the jury, find the issue joined for the plaintiffs, and assess their damages at three thousand four hundred and fifty-two dollars and ten cents.

Motion for new trial by defendants.

Jury fee fixed at $12 00.

June 30th.—And now, on consideration of said motion for new trial, and arguments of counsel thereon, it is ordered by the court that said motion be overruled, and that judgment be entered upon the verdict; and thereupon it is considered by the court that the plaintiffs recover of the defendants their damages as aforesaid assessed, together with their costs in this behalf expended; and execution is awarded therefor.

Damages, $3,452 10; costs, $27 59; interest from May 15th, 1848.

And now come the said defendants, and tender to the court their certain bill of exceptions; which the court sign, seal, allow, and order to be made part of the record herein.

STATE OF OHIO, *Hamilton county, ss.*

I, Edward C. Roll, clerk of the court of common pleas, within and for the county of Hamilton, State of Ohio, do hereby certify, that the foregoing is a true and correct copy of the docket and journal entries in the within case of J. H. & J. Walker vs. D. B. Lawler et al., as they appear in my office.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court, at Cincinnati, this second day of April, [L. S.] anno domini 1849.

E. C. ROLL, *Clerk, H. C.*

Summons issued July 3d, 1846, from court of common pleas.

THE STATE OF OHIO, *Hamilton county, sct.*

To John H. Gerard, sheriff of our said county, greeting:

We command you to summon Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet, if they shall be found in your bailiwick, to be and appear before the judges of our court of common pleas, at the court-house in Cincinnati, in said county, forthwith to answer unto James H. Walker and John Walker, partners in trade under the firm of J. H. & J. Walker, in a plea of the case to the damage of the said plaintiffs six thousand dollars as is said; and have then there this writ.

In witness whereof I have hereunto set my hand and affixed the seal of our said court, at Cincinnati, this 3d day of July, anno [L. S.] domini 1846.

E. C. ROLL, *Clerk C. C. P. H. C.*
By J. M. McMASTER, *Dep'y.*

Endorsement.

Which writ was endorsed by said court of common pleas: "Summons in case suit brought to recover the amount of bills held by plaintiffs, issued by the Cincinnati and Whitewater Canal Company, an unauthorized bank, under the directions of the defendants; amount due, $4,000 00; damages, $6,000 00. To May term, 1846, (see back.")

Return.

And duly returned by said sheriff, to said court of common pleas, with the following endorsements, to wit:

1846, July 4th, served by copy, personally, on *David* B. Lawler, and by copy at residence of Timothy Walker, George Graham, John Scott Harrisson, Jacob Burnet, and service acknowledged for Stephen S. L'Hommedieu, by their attorneys, Wrights & Miner.

J. H. GERARD, *Sheriff.*

Acknowledgement of service.

We acknowledge service for Stephen S. L'Hommedieu.
July 4th, 1846. WRIGHTS & MINER.

Declaration filed 29th August, 1846, in court of common pleas.

Hamilton common pleas, May term, A. D. 1846.

THE STATE OF OHIO, *Hamilton county, ss.*

James H. Walker and John Walker, partners under the firm of J. H. & J. Walker, plaintiffs, complain of Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, and Jacob Burnet, defendants, in a plea of trespass on the case on promises; for that whereas, heretofore, to wit, on the first day of January, 1841, at the county aforesaid, the said defendants were stockholders, shareholders, or otherwise interested in a certain association, not incorporated as a bank by any law of the State of Ohio, nor authorized by any laws of said State, to loan money, or otherwise act as a bank; which association was styled and known as the Cincinnati and Whitewater Canal Company; and the said unincorporated association or unauthorized bank did, by its officers, to wit, the said defendants, and one Joseph Bonsall, president, and one Samuel Foote, secretary, on the second day of January, 1841, and at divers other days and times before that day, and before the commencement of this suit, at the county aforesaid, issue certain notes and bills, calculated and intended to circulate by delivery, and certain other notes and bills, payable to order, and endorsed by the payee for the purpose of putting the same in circulation to circulate by delivery, and certain other notes and bills; and did use such shifts or devices, that thereby the said notes or bills given, issued, and put in circulation by said company or association, or on their behalf, did pass or circulate by delivery; and the said plaintiffs heretofore, to wit, on the first day of January, 1842, at the county aforesaid, became the holders of said notes and bills to a large amount, to wit, to the amount of two thousand dollars; and the said plaintiffs aver, that the said defendants were directors, stockholders, or otherwise interested in said unauthorized bank or association, at the date of said notes, and thereby the said defendants became liable to pay to the said plaintiffs the said sum of two thousand dollars whenever they should be thereunto afterwards requested; and being so liable, the said defendants, afterwards, to wit, on the first day of January, 1842, at the county aforesaid, undertook, and then and there faithfully promised, to pay the

said sum of money to the said plaintiffs whenever they, the said defendants, should be thereunto afterwards requested; and also for that, whereas heretofore, to wit, on the first day of January, 1841, at the county aforesaid, the said defendants were stockholders, shareholders, or otherwise interested in a certain association not incorporated as a bank by any law of the State of Ohio, nor authorized by any laws of said State, to loan money or otherwise act as a bank; which association was styled and known as the Cincinnati and Whitewater Canal Company; and the said unincorporated association or unauthorized bank did, by its officers, to wit:

The said defendants, and one Joseph Bonsall, president, and one Samuel E. Foote, secretary, on the second day of January, 1841, and at divers other days and times before that day and before the commencement of this suit, at the county aforesaid, issue certain notes and bills, calculated and intended to circulate by delivery, and certain other notes and bills payable to order, and endorsed by the payee for the purpose of putting the same in circulation, to circulate by delivery, and certain other notes and bills; and did use such shifts or devices that thereby the said notes or bills, given, issued and put in circulation, by said company or association, or on their behalf, did pass or circulate by delivery; and the said plaintiffs heretofore, to wit, on the first day of January, 1842, at the county aforesaid, at the special instance and request of the said defendants, became the holders of said notes or bills to a large amount, to wit, to the amount of two thousand dollars; and the said plaintiffs aver that the said defendants were directors, stockholders, or otherwise interested in said unauthorized bank or association, at the date of said notes, and thereby the said defendants become liable to pay, and then and there, in consideration of the premises, undertook and promised to pay, to the said plaintiffs the said sum of two thousand dollars whenever they should be thereunto afterwards requested; and being so liable the said defendants afterwards, to wit, on the first day of January, 1842, at the county aforesaid, undertook, and then and there faithfully promised, to pay the said last mentioned sum of money to the said plaintiffs whenever they should be thereunto afterwards requested.

And also for that whereas heretofore, to wit, on the first day of January, 1842, at the county aforesaid, the said defendants were indebted to the said plaintiffs in the further sum of two thousand dollars, for money then and there lent and advanced by the said plaintiffs for the use of the said defendants; and in the further sum of two thousand dollars, for money then and there paid, laid out, and expended by the said plaintiffs for the use of the defendants at their special instance and request; and in the further sum of two thousand dollars, for money then and there had and received by the said defendants for the use of the plaintiffs; and the said defendants afterwards, to wit, on the day and year last aforesaid, and at the county aforesaid, in consideration of said indebtedness, undertook and then and there faithfully promised to pay the said last mentioned several sums of money to the said plaintiffs on

request: Yet the said defendants have disregarded their said promises and undertakings, and although often requested, have not paid the said several sums of money in the foregoing counts specified, nor either of them, or any part thereof, to the said plaintiffs, to the damage of said plaintiffs of six thousand dollars; and thereupon they bring suit, &c., by Chase & Ball, their attorneys.

Pleas of defendants, filed 29th August, 1846, in court of common pleas.

DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson and Jacob Burnet, ads. J. H. & J. WALKER. } Common pleas.

And said defendants come and defend, &c., and say, they did not undertake and promise in manner and form as said plaintiffs have declared against them, and of this *the* put themselves upon the country, and the plaintiffs do the like; and for a further plea to first and second counts in this behalf, the said defendants by leave of court first had say, that said plaintiffs ought not to have or maintain his aforesaid action thereof against them on said first and second counts in the declaration, because they say that said defendant did not, at any time within four years next before the commencement of this suit, undertake or promise in manner and form as said plaintiffs have above complained against them in said first and second counts, and this said defendants are ready to verify; wherefore they pray judgment if said plaintiffs ought to have or maintain his aforesaid action thereof against them.

HART & MURDOCH, *Attorneys for J. S. Harrisson.*
GROESBECK & YELFORD, *Attorneys for Burnet.*
T. WALKER, *for self and Lawler and L'Hommedieu.*

Plea of G. Graham, filed June 18th, 1847, in court of common pleas.

GEORGE GRAHAM ads. J. H. & J. WALKER. } Action of assumpsit.

And the said defendant, by Fox and French, his attorneys, comes and defends the wrong and injury when, &c., and for plea says, he did not undertake and promise in manner and form as the said plaintiffs in declaring have alleged, and of this he puts himself upon the country, and the plaintiffs do the like.

FOX & FRENCH,
Attorneys for Defendant.

Demurrer to plea, filed June 18th, 1847, in court of common pleas.

SUPERIOR COURT OF CINCINNATI.

JAMES H. WALKER & JOHN WALKER vs. DAVIS B. LAWLER et al. }

And the said plaintiffs, as to the second plea of the said Davis B.

Lawler, and others joining in said plea, say that the same and the matters therein contained are not sufficient in law to bar or preclude the said plaintiffs from maintaining their action aforesaid, and that they are not bound to answer the same; wherefore the said plaintiffs pray judgment, and their damages, &c., to be adjudged to them, &c.

CHASE & BALL,
For Plaintiffs.

Bill of exceptions, signed, filed, &c., June 30th 1848, in court of common pleas.

JAMES H. WALKER & John Walker
vs.
DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, Jacob Burnet.

Hamilton common pleas, May term 1848.

Be it remembered, that on the trial of this cause the plaintiff, in order to sustain his action, proved the signatures of Bonsall and Foote, offered in evidence the notes numbered one, two, three and four, and other notes of the same character and denominations, to the amount in the whole of two thousand four hundred and ninety-seven dollars, signed Joseph Bonsall, president, Samuel E. Foote, secretary; which notes are hereto referred to and made part of this bill: and also gave in evidence in connexion therewith the original book of minutes of the proceedings of the board of directors of the Cincinnati and Whitewater Canal Company, and read in evidence therefrom the following resolutions, orders, and entries, which are truly copied, as per paper A, hereto attached and made part of this bill of exceptions; and proved the defendants named in said resolutions were present, and participated in said proceedings.

The plaintiff also proved that, at the time said notes were issued, the defendants were all stockholders and acting directors of the board of the Cincinnati and Whitewater Canal Company, a corporation created by an act of the legislature of Ohio; that said notes were all issued under the direction and resolutions of the defendants, and one Joseph Bonsall, sitting as the said board of directors of the said Cincinnati and Whitewater Canal Company, and that said defendants had no personal interest in the notes so issued, other than as stockholders in said institution. It was also proved that the principal cause of issuing the notes in question was the failure of the State to pay its stock and individual delinquency of other stockholders; that the said defendants and Joseph Bonsall, since deceased, sitting as board of directors, being desirous to proceed with their work, but unable to do so for want of funds, the contractors, who had agreed to do the work on the canal, represented that they could carry on the work if the board would issue their notes for the work in such form and amounts that the said contractors could pay them out to their hands, and the notes were thereupon ordered to be issued by said defendants and said Bonsall, sitting as said board, as

request: Yet the said defendants have disregarded their said promises and undertakings, and although often requested, have not paid the said several sums of money in the foregoing counts specified, nor either of them, or any part thereof, to the said plaintiffs, to the damage of said plaintiffs of six thousand dollars; and thereupon they bring suit, &c., by Chase & Ball, their attorneys.

Pleas of defendants, filed 29th August, 1846, in court of common pleas.

DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson and Jacob Burnet, ads. J. H. & J. WALKER. } Common pleas.

And said defendants come and defend, &c., and say, they did not undertake and promise in manner and form as said plaintiffs have declared against them, and of this *the* put themselves upon the country, and the plaintiffs do the like; and for a further plea to first and second counts in this behalf, the said defendants by leave of court first had say, that said plaintiffs ought not to have or maintain his aforesaid action thereof against them on said first and second counts in the declaration, because they say that said defendant did not, at any time within four years next before the commencement of this suit, undertake or promise in manner and form as said plaintiffs have above complained against them in said first and second counts, and this said defendants are ready to verify; wherefore they pray judgment if said plaintiffs ought to have or maintain his aforesaid action thereof against them.

HART & MURDOCH, *Attorneys for J. S. Harrisson.*
GROESBECK & YELFORD, *Attorneys for Burnet.*
T. WALKER, *for self and Lawler and L'Hommedieu.*

Plea of G. Graham, filed June 18th, 1847, in court of common pleas.

GEORGE GRAHAM ads. J. H. & J. WALKER. } Action of assumpsit.

And the said defendant, by Fox and French, his attorneys, comes and defends the wrong and injury when, &c., and for plea says, he did not undertake and promise in manner and form as the said plaintiffs in declaring have alleged, and of this he puts himself upon the country, and the plaintiffs do the like.

FOX & FRENCH,
Attorneys for Defendant.

Demurrer to plea, filed June 18th, 1847, in court of common pleas.

SUPERIOR COURT OF CINCINNATI.

JAMES H. WALKER & JOHN WALKER vs. DAVIS B. LAWLER et al. }

And the said plaintiffs, as to the second plea of the said Davis B.

Lawler, and others joining in said plea, say that the same and the matters therein contained are not sufficient in law to bar or preclude the said plaintiffs from maintaining their action aforesaid, and that they are not bound to answer the same; wherefore the said plaintiffs pray judgment, and their damages, &c., to be adjudged to them, &c.

CHASE & BALL,
For Plaintiffs.

Bill of exceptions, signed, filed, &c., June 30th 1848, *in court of common pleas.*

JAMES H. WALKER & John Walker
vs.
DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrisson, Jacob Burnet.

Hamilton common pleas, May term 1848.

Be it remembered, that on the trial of this cause the plaintiff, in order to sustain his action, proved the signatures of Bonsall and Foote, offered in evidence the notes numbered one, two, three and four, and other notes of the same character and denominations, to the amount in the whole of two thousand four hundred and ninety-seven dollars, signed Joseph Bonsall, president, Samuel E. Foote, secretary; which notes are hereto referred to and made part of this bill: and also gave in evidence in connexion therewith the original book of minutes of the proceedings of the board of directors of the Cincinnati and Whitewater Canal Company, and read in evidence therefrom the following resolutions, orders, and entries, which are truly copied, as per paper A, hereto attached and made part of this bill of exceptions; and proved the defendants named in said resolutions were present, and participated in said proceedings.

The plaintiff also proved that, at the time said notes were issued, the defendants were all stockholders and acting directors of the board of the Cincinnati and Whitewater Canal Company, a corporation created by an act of the legislature of Ohio; that said notes were all issued under the direction and resolutions of the defendants, and one Joseph Bonsall, sitting as the said board of directors of the said Cincinnati and Whitewater Canal Company, and that said defendants had no personal interest in the notes so issued, other than as stockholders in said institution. It was also proved that the principal cause of issuing the notes in question was the failure of the State to pay its stock and individual delinquency of other stockholders; that the said defendants and Joseph Bonsall, since deceased, sitting as board of directors, being desirous to proceed with their work, but unable to do so for want of funds, the contractors, who had agreed to do the work on the canal, represented that they could carry on the work if the board would issue their notes for the work in such form and amounts that the said contractors could pay them out to their hands, and the notes were thereupon ordered to be issued by said defendants and said Bonsall, sitting as said board, as

per said resolutions; most of them were issued to contractors who performed work in building the canal of the company, and that none of the notes were issued or paid out to any person other than bona fide creditors of the company, or in payment of debts or adjustment of claims; and the names of the creditors, to whom such notes were given in payment of debts, were inserted in the blanks left in the engraved notes, and no notes were ever loaned or issued in any other way. It was also proved that said Cincinnati Whitewater Canal Company never loaned money, nor never bought or sold bills or received deposites, nor did they transact any banking business whatever; that none of the notes were ever re-issued; it was proved that said notes passed and circulated as money, like other paper currency, for a year or more after they were issued, except that they were never received in the banks of the city. It was also proved that the plates, from which the notes were struck, were engraved on the order of the president of said company, Joseph Bonsall, and charged to the Cincinnati and Whitewater Canal Company, and the engraver received his pay in the notes of said company struck from the plates.

And thereupon the defendants objected to said notes being read as evidence to the jury, for the following reasons:

1st. Because the notes offered are the obligations of the Cincinnati and Whitewater Canal Company, a corporation created by an act of the legislature of Ohio.

2d. Because the handwriting of the endorsements on the back of said notes was not proved, nor any evidence offered to prove the same.

3d. Because the endorsements are not filled up so as to show the present plaintiffs are the legal owners of said notes, but remain in blank.

4th. Because said notes are not specially nor substantially set forth or described in the declaration. But the court overruled said objections, and permitted said notes to be read in evidence; to which overruling of said objections and admission of said notes as evidence, the defendants, by their counsel, except, and pray this their exception may be signed and sealed, which is done. And the plaintiffs having given the evidence stated and set forth in the foregoing bill of exceptions, and having also proved that the plaintiffs were copartners, and no evidence being given to prove the handwriting of the several endorsements appearing on the back of said notes, and no other evidence being given in the cause, the defendants asked the court to charge the jury as follows:

1st. That if they believe the aforesaid notes were issued by the Cincinnati and Whitewater Canal Company, in payment of debts due by that company, created in the prosecution of the object of the act of incorporation, no recovery can be had against these defendants in this suit.

2d. That inasmuch as the notes, given in evidence, are made payable to order, no recovery can be had against the defendant, unless the plaintiffs first prove the genuineness of the signatures and endorsements made on the back of said notes.

3d. That if these notes were executed by the Cincinnati and Whitewater Canal Company, payable to the persons named in the notes, no person can recover the amount of said notes, unless he first shows that he has become the legal owner of said notes by proof of a regular transfer of the title of said notes.

4th. That in legal contemplation no person is the holder of a note unless he prove himself to be the owner of such note.

5th. That if the jury believe the Cincinnati and Whitewater Canal Company did not receive money on deposite, or do any kind of banking business, and that said corporation paid out the notes in question to their creditors, in payment of their debts, and that these defendants had no interest in said notes, or the issue thereof, except as stockholders and directors of the Cincinnati and Whitewater Canal Company, and that they in issuing said paper, and passing said resolutions, only acted as members of the board of said Cincinnati and Whitewater Canal Company, there can no verdict be rendered against them on said notes.

6th. That if the Cincinnati and Whitewater Canal Company did not intend and prepare their notes to circulate beyond the creditors of the company, the defendants are not liable, and the plaintiffs must prove the defendants intended them and prepared them for a circulation beyond their creditors.

7th. That if the plaintiffs did not receive the notes as currency, and while they were such, but received them after they were not circulating, they cannot recover. They must prove they received them while in circulation as a currency as other bank notes.

8th. That no recovery can be had in this case on the notes offered in evidence, because they are not specially declared upon.

9th. That no recovery can be had in this case unless it is proved that the notes were endorsed in blank before the same were issued by the company, and then issued by said company.

All of which charges, except the sixth one, the court refused to give in terms as asked, but overruled the motion to give said charges; and to which refusal to give said charges, and overruling of said motion, the defendants, by their counsel, except, and pray this their exception may be signed, sealed, and allowed, which is done, and ordered to be made part of the record.

And the court charged the jury as follows: That if the paper was issued under the directions or orders of the defendants, and intended to circulate as currency, they would be liable in this action, whether issued for the individual benefit of the defendants or for the benefit of the Cincinnati and Whitewater Canal Company; that if the company had issued notes not intended to circulate as a currency, as bank paper generally does, in the ordinary form, *and* but merely to pay off their creditors, the defendants would not be liable; that if the defendants, in issuing said notes, acted merely as directors of the Cincinnati & Whitewater Canal Company, and within the limits of their corporate powers, they would not be personally liable; but that said charter

of said company did not authorize the issuing of notes designed or calculated to circulate as money, and therefore would not protect the defendants, if the jury should be satisfied that they issued such notes; that although in ordinary cases, where notes are made payable to order, it may be necessary for a plaintiff to prove the endorsement, yet, if the jury find in this case that these notes were issued and intended to circulate as a currency, it is not necessary to prove the handwriting of the endoiser, and the mere fact of the plaintiffs having the notes in their possession is prima facie evidence of ownership.

To which charges, as given, the counsel for the defendant also excepts, and prays this his exception may be signed and sealed, which is done.

WILLIAM B. CALDWELL, [SEAL.]
President Judge.
ROBT. MOORE, [SEAL.]
[SEAL.]
JAMES SAFFIN. [SEAL.]

And the foregoing testimony, as set forth in the foregoing bills of exceptions, being all the evidence offered in the cause, and the jury having returned a verdict in favor of the plaintiffs, the defendants moved the court to set aside the verdict, and grant a new trial, for the reasons filed, in the words and figures following, to wit:

LAWLER et als.
ads.
WALKER.

Ham. com. pleas.

The defendants move the court to set aside the verdict in this case, and to grant a new trial, for the following reasons:

1st. Because the verdict is contrary to evidence.

2d. Because it is contrary to law.

3d. Because it is contrary to the charge of the court.

4th. Because the court erred in charging the jury, and in refusing to charge the jury as requested by the defendants.

FOX & FRENCH,
GROESBECK, *Attorneys.*

Which motion the court overruled, and rendered judgment on the verdict; to which overruling of said motion and refusing to grant a new trial, the defendants except, and pray this their bill of exceptions may be signed and sealed, which is done.

WILLIAM B. CALDWELL, [SEAL.]
President Judge.
ROBERT MOORE, [SEAL.]
[SEAL.]
JAMES SAFFIN. [SEAL.]

No. 18667. D.

1 1

The Cincinnati & Whitewater Canal Co. promise to pay one dollar to R. McCurdy or order, twelve months after date, for value received, at their office, Cincinnati, 9th Nov., 1840.

SAM. E. FOOTE, *Sec'y.* J. BONSALL, *Pres't.*

No. 1. Endorsed "R. McCurdy."

No. 14027. C.

2 2

The Cincinnati & Whitewater Canal Co. promise to pay two dollars to J. Carncross or order, twelve months after date, for value received, at their office, Cincinnati, 14th Oct., 1840.

SAM. E. FOOTE, *Sec'y.* J. BONSALL, *Pres't.*

No. 2. Endorsed "J. Carncross."

No. 3484. B.

3 3

The Cincinnati & Whitewater Canal Co. promise to pay three dollars to J. Hyatt or order, twelve months after date, for value received, at their office, Cincinnati, 30th July, 1840.

SAM. E. FOOTE, *Sec'y.* J. BONSALL, *Pres't.*

No. 3. Endorsed "J. Hyatt."

No. 3322. A.

5 5

The Cincinnati & Whitewater Canal Co. promise to pay five dollars to S. & H. Howard & Co., or order, twelve months after date, for value received, at their office, Cincinnati, 17th June, 1840.

SAM. E. FOOTE, *Sec'y.* J. BONSALL, *Pres't.*

No. 4. Endorsed "S. & H. Howard & Co."

Paper A, containing the resolutions, orders, and entries, offered in evidence by the plaintiffs.

1840, March 5th. Special meeting of the directors was held this day. Present, Bonsall, Burnet, Walker, L'Hommedieu, Graham, and Lawler. Amongst other things,

Resolved, That the president be authorized and directed to prosecute the work on the canal to completion during the present season, if it can be done by using the credit of the company; and that he be authorized to issue the promissory notes of the company, payable twelve months after date, in payment or liquidation of the debts and liabilities of the company contracted for the execution of the work, if the contractors and creditors are willing to receive the same in payment of their claims.

Resolved, further, That for the redemption of the notes to be issued

under the above resolutions, as they become due, the company hereby pledge to the holders of said notes the bonds of the State, or the proceeds thereof, due on her subscriptions to the amount of $85,000 00; the bonds of the city of Cincinnati to the amount of $80,000 00; and individual subscriptions amounting to $67,500 00; also the canal and nett proceeds of tolls.

Resolved, That the president issue the company's notes in convenient sums to all persons to whom the company is or may be indebted, payable to them or to their order, twelve months after date, at the office of the company, and that said notes be signed by the president, and countersigned by the treasurer.

Resolved, That instalments of stock be called for, &c., &c. 1840, March 24. Present, Bonsall, Lawler, Harrisson, and Walker.

Resolved, That notes of company be issued to contractors for per centage retained; that he adjust interest account with the council, &c., and that instalments of five dollars on the share be called for. 1840, April 20.

Resolved, That president may compromise with Williams for land taken for canal, and with others.

Resolved, That secretary countersign company's notes and keep a register thereof. 1840, May 11.

Report of president that he has issued company's notes for right of way:

To Peter Williams, for warrantee deed -	$690 00
To S. Blackburn and others - - -	300 00
To Peter Hoke - - - - - - -	135 00

The president having stated that, in his opinion, work of canal could not be prosecuted without cash fund, and that at this juncture embarrassments in the finances would prove disastrous to the best interests of the company:

It was resolved, That president be authorized to raise money by sale or hypothecation of city bonds, provided they were not sold for less than 90 cents of their par value, &c.

Resolved, That President and Harrisson be a committee to compromise claims for damages, &c. Present, Bonsall, Lawler, Walker, Harrisson, and L'Hommedieu. 1840, September 21.

Report of settlement of right of way in notes of company and of agreement to construct a bridge over canal, &c. 1840, November 26.

Report of the president that he had issued notes of company, and authority given to issue sufficient to pay debts, &c., but no more to be issued, &c. 1841, January 16.

Report of committee as to condition and progress of canal in detail. Deficit of means to pay notes of company, $60,470.

Assignment of errors, filed April 3d, 1849.

And afterwards, to wit, on the third day of April, anno domini 1849, plaintiffs in error, by their attorneys, filed in our supreme court of the State of Ohio, within and for the county of Hamilton, their assignment of errors, closed in the words and figures following, to wit:

DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, and Jacob Burnet,
vs.
JAMES H. WALKER.

Hamilton supreme court, on error.

And now the said plaintiffs come and say, that in the record and proceedings aforesaid, and in the judgment rendered, there is manifest error to their prejudice, and they assign the following causes of error:

1st. Because the court erred in sustaining the demurrer to the 2d and 3d pleas.

2d. Because said court erred in admitting testimony.

3d. Because the court erred in refusing to charge the jury as requested by the defendants below.

4th. Because the court erred in charging as it did charge.

5th. Because the court erred in refusing to grant a new trial.

6th. Because the court rendered judgment in favor of the plaintiffs below, whereas judgment ought to have been rendered in favor of the defendants below.

For these and other errors in said record appearing, the plaintiffs pray said judgment may be reversed, annulled, and set aside, and that they may be restored to all they have lost by reason of said judgment.

FOX AND FRENCH,
Attorneys for plaintiffs in error.

Joinder in error, filed May 4, 1849.

And afterwards, to wit, on the fourth day of May, anno domini 1849, the defendants in error, by their attorneys, filed in our supreme court aforesaid, within and for the county of Hamilton, their joinder in error, closed in the words and figures following, to wit:

HAMILTON SUPREME COURT.

JAMES H. WALKER et al.
ads.
DAVIS B. LAWLER et al.

In error to Hamilton common pleas.

And the said defendants in error come and say, that there is no error either in the record and proceedings aforesaid, or in giving the judgment aforesaid, and therefore they pray that the said judgment may be affirmed, and that their costs may be adjudged them, &c.

CHASE, BALL, AND HOADLEY,
Attorneys for defendants in error.

1849. *No.* 86. *Min.* 113. *Reserved for court in bank.*

And now here, to wit, at the term of May, anno domini one thousand eight hundred and forty-nine, of our supreme court of the State of

Ohio, sitting within and for the county of Hamilton, come the parties aforesaid, by their attorneys aforesaid, before our supreme court aforesaid, and on motion to our said court by said parties, said cause was reserved for the decision of our supreme court of the State of Ohio, sitting in bank.

DAVIS B. LAWLER, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Harrisson, and Jacob Burnet,
vs.
JAMES H. WALKER and John Walker, partners, &c., firm of J. H. & J. Walker.

Error to court of common pleas. Reserved for the decision of the supreme court in bank.

1849, *December term. Court in bank. Judgment affirmed. No.* 86. *Min.* 149.

And afterwards, to wit, on the eighteenth day of January, anno domini 1850, there was filed in the office of the clerk of our supreme court of the State of Ohio, within and for the county of Hamilton, a certificate of the judgment made and entered in this cause by the said supreme court in bank, closed in the words and figures following, to wit:

Supreme court of the State of Ohio, in bank, of the term of December, 1849.

DAVIS B. LAWLER et al.
vs.
J. & J. H. WALKER.

In error. Reserved from the county of Hamilton.

This cause came on to be heard upon the original files and pleadings, and the transcript of the judgment of the court of common pleas of Hamilton county, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said court of common pleas be, and the same is hereby, affirmed with costs.

Ordered, that a special mandate be sent to the said court of common pleas to carry this judgment into execution.

Ordered, that a copy of this entry be certified to the clerk of the supreme court of Hamilton county for entry, &c.

THE STATE OF OHIO, *ss.*

I, Lewis Heyl, clerk of the court of the State of Ohio, in bank, certify the foregoing to be a true copy from the journal of said court, of the term of December, A. D. 1849.

[L. S.] Witness my hand, and the seal of said court, at Columbus, this 29th day of December, A. D. 1849.

LEWIS HEYL, *Clerk.*

1849, December term, court in bank, further entry, No. 86, min. 150.

And afterwards, to wit, on the eighth day of February, anno domini 1850, there was filed with the clerk of our supreme court of the State of Ohio aforesaid, within and for the county of Hamilton aforesaid, a certificate of a further entry made in this cause by our supreme court, in bank, closed in the words and figures following, to wit:

Supreme court of the State of Ohio, in bank, of the term of December, 1849.

DAVIS B. LAWLER et al.
vs.
J. & J. H. WALKER. } In error.

Reserved from the county of Hamilton.

In this cause, the judgment of the court of common pleas having been affirmed, it is now certified that this is the highest court of law in the State of Ohio in which a decision of this suit could be had; and that there is drawn in question the validity of statutes of the State of Ohio, in which it is claimed by plaintiffs in error those statutes are in violation of the Constitution of the United States; and which statutes have been held valid and binding by this court, notwithstanding such objections. And this certificate is ordered to be made part of the record.

THE STATE OF OHIO, *ss.*

I, Lewis Heyl, clerk of the supreme court of the State of Ohio, in bank, certify the foregoing to be a true copy from the journal of said court, of the term of December, A. D. 1849.

[L. S.] Witness my hand, and the seal of said court, at Columbus, this 8th day of February, A. D. 1850.

L. HEYL, *Clerk.*

THE STATE OF OHIO, *Hamilton county, sct.*

I, Isaac G. Burnet, clerk of the supreme court of the State of Ohio, within and for the county of Hamilton, certify that the above and foregoing contain a true and correct transcript of the record of the proceedings had by our supreme court of the State of Ohio, in the cause wherein Davis B. Lawler and others were plaintiffs in error, and James H. Walker and John Walker, partners, &c., were defendants in error, as the same stands recorded in book No. 31, page 243, of the supreme court records in my office.

[L. S.] In witness whereof I hereunto set my hand and the seal of our supreme court of the State of Ohio, at Cincinnati, this thirteenth day of March, anno domini one thousand eight hundred and fifty.

ISAAC G. BURNET, *Clerk.*
PT. T. G. BURNET, *D'ty.*

And the said Davis B. Lawler, Jacob Burnett, Timothy Walker, Stephen S. L'Hommedieu, George Graham, and John Scott Harrison, come and say, that in the record and proceedings aforesaid there is manifest error to their prejudice, in this, to wit, that said supreme court of Ohio has confirmed the original judgment of the court of common pleas, whereas they ought to have reversed the said judgment, and ought to have rendered judgment against the original plaintiffs.

For these and other errors in said record appearing, they pray the allowance of a writ of error and supersedeas, and that said judgment of the said supreme court may be reversed and set aside.

CHARLES FOX,
Attorney for plaintiffs in error.

I allow a writ of error in this case, on defendants giving bond and security in five hundred dollars. The clerk of the circuit court of the United States, for the district of Ohio, will issue the writ, take the security, &c.

JOHN McLEAN,
Justice Sup. Court, U. States, 7th circuit.

20th March, 1850.

Supreme Court of the United States.

The President of the United States of America, to James H. Walker and John Walker, greeting:

Whereas Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, and Jacob Burnet, have obtained the allowance of our writ of error, to the supreme court of the State of Ohio, within and for the county of Hamilton directed, to remove into the said Supreme Court of the United States, to be holden at the city of Washington, on the first Monday in the month of December next, the record of a certain plaint, process, proceedings, and judgment, in an action on the case, wherein you, the said James H. Walker and John Walker, in that action lately recovered against the said Davis B. [Lawler,] Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, and Jacob Burnet, thirty-four hundred and fifty-two dollars and ten cents damages, and twenty-seven dollars and fifty-four cents costs, as by the said record, in the said supreme court of the State aforesaid remaining, appears; in which said record and proceedings, and also in the rendition of the judgment thereupon, manifest error hath intervened; as by the said Davis B. Lawler, Timothy Walker, Stephen S. L'Hommedieu, George Graham, John Scott Harrison, and Jacob Burnet, we are informed, and our said writ of error granted, issued, and allowed, as aforesaid, for the purpose of correcting the errors aforesaid alleged, if any there be: you are, therefore, hereby commanded and cited to be and appear before the judges of the said Supreme Court, at the city of Washington, at the next term of

said court, to be holden on the first Monday in the month of December next, to have the errors aforesaid corrected, and the judgment of our said Supreme Court thereupon.

Witness the honorable Roger B. Taney, chief justice of the United States of America, this fourth day of April, in the [L. S.] year of our Lord one thousand eight hundred and fifty, and of the independence of the United States of America the seventy-fourth.

JOHN McLEAN.

We acknowledge service of this citation.

CHASE & BALL,
By F. BALL,
Att'ys for J. H. & J. Walker, def'ts in error.

13th April, 1850.